



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, Governor
Sean Dilweg, Commissioner

Wisconsin.gov

125 South Webster Street • P.O. Box 7873
Madison, Wisconsin 53707-7873
Phone: (608) 266-3585 • Fax: (608) 266-8935
E-Mail: ociinformation@wisconsin.gov
Web Address: oci.wi.gov

Testimony of Commissioner Sean Dilweg To the Assembly Committee on Insurance Assembly Bill 811 March 11, 2010

Chairman Cullen and Members of the Committee:

Thank you for the opportunity to testify in support of Assembly Bill 811, relating to suitability of annuity contracts. This proposal reflects recent modifications to the National Association of Insurance Commissioners Suitability in Annuity Transactions Model Regulation. Additionally, Senator Herb Kohl has included state adoption of the NAIC model as a requirement for securing grants under his Investor Protection Act.

AB 811 updates Wisconsin's suitability of annuity sales statute to improve consumer protections by strengthening insurer supervision over suitability determinations in annuity sales and requiring that agents are adequately trained.

The number of complex annuity products in the market today continues to grow. The consumer base for these products is also increasing as more baby-boomers plan for retirement and the product is highlighted on the national level as an investment tool worth considering. In January, President Obama encouraged people to consider annuities to transform savings into guaranteed future income. With more consumer attention to this product, it is critical that measures are in place to ensure consumers are sold annuity products that meet their financial needs and goals. Current law has proven inadequate in preventing unsuitable annuity sales.

Unsuitable sales result from improper or abusive sales practices as well as inadvertent circumstances where agents lack a full understanding about the complex annuity products they are selling. In both cases, companies must be held accountable for the actions of their agents. Gaps in current law give companies wide latitude in maintaining procedures for supervising sales which has led to inadequate supervisory procedures and company responsibility. For example, a common practice among insurers is to delegate supervision of suitable sales to branch managers. Often times, the individuals who are signing off on consumer suitability certification forms have something to financially gain from the sale.

Some companies are invoking a broad interpretation of current law and are pushing back on measures to supervise and monitor the suitability of annuity sales. Such measures include:

Implementing a process to ensure all agents are provided with and acknowledge receipt of the company's Position of Suitability and Suitability Guide for Agents.

More closely monitoring the suitability of an agent's new annuity sales when a high percentage of an agent's new business involves replacements or surrenders.

Developing a set of established suitability standards that can provide guidance to the insurer's Suitability Review Team when determining whether the agent had reasonable grounds for believing a recommendation was suitable.

Since 2006, OCI received 236 complaint filings relating to annuities and suitability. Of these, over half led to administrative actions. These cases are difficult because they are brought after the products are sold. Therefore, there is a strong reliance on an insured's ability to recall several sequences of events leading up to and following an unsuitable sale.

A recent OCI case involving an agent who sold unsuitable products to six senior adults revealed the following:

- The agent used false statements and omitted information regarding prospective profits to be made. For example, equity indexed annuities use a myriad of moving parts that interact in complex ways. The agent emphasized the potential to make more money with an equity indexed annuity over a fixed annuity but failed to disclose the risk of less return than a fixed annuity.
- The agent sold a policy with a 17 year surrender period to a client who was 74 years of age.
- The agent replaced a client's annuity product for a different one which resulted in a significant penalty. The decision to replace the product was made during a meeting scheduled to review death benefit paperwork due to the client's wife passing away just a few weeks prior.
- The agent made recommendations for his personal gain by generating commissions with no guarantee that the products would improve the situation of the consumers.

In February of this year, Wisconsin and four other states settled with a large Ohio-based insurance firm over the insurer's role in the unsuitable sale of variable annuities. Wisconsin's share of the settlement was \$235,000. As part of the settlement, the insurer must mail restitution options to eligible consumers.

AB 811 puts a framework in place for insurers to determine that products are suitable for consumers before they are issued. This will lead to fewer instances where consumers are sold unsuitable annuity products.

Key provisions include:

- Prohibiting the sale of an annuity unless:
 - Consumer suitability information is collected, including age; annual income; financial situation, risk tolerance and financial goals.
 - A consumer is informed of surrender periods, surrender charges and tax penalties if a decision is made to surrender or exchange their annuity product.
 - A consumer would benefit from certain features in the annuity.
 - The annuity as a whole is suitable given the consumers suitability information.
- Insurers must establish a supervision system that includes review of each recommended annuity sale prior to the issuance of the annuity. This may be set up as a "red flag" system that each application is run through and where any suspicious sale is "flagged" for further review.
- Insurers may contract out their review functions but must supervise any contractual performance including monitoring and conducting audits to ensure the contracted function is carried out properly. An annual certification from a senior manager representing that the functions are carried out properly is required as well. Insurers are responsible for corrective action and may be subject to penalties if the contracted party violates review requirements, etc.
- Insurers must establish product specific training for agents and agents cannot sell annuities unless they are in compliance with the insurer's product training requirements.
- Agents selling annuity products must complete a one-time 4 hour training course.
- Insurers are responsible for compliance with the requirements in AB 811 and may be subject to penalties relating to insurer violation or any of its insurance agent violations of the requirements.

Thank you for the opportunity to testify today. I encourage your support for this legislation.

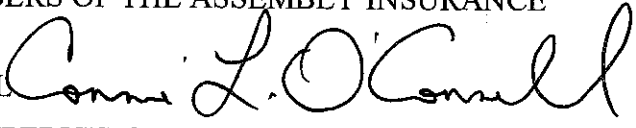


Wisconsin Council of Life Insurers

Parrett & O'Connell, LLP
10 East Doty St. - Suite 621, Madison, WI 53703
Phone: 608-251-1968

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MEMORANDUM

TO: HONORABLE MEMBERS OF THE ASSEMBLY INSURANCE COMMITTEE
FROM: CONNIE O'CONNELL 
SUBJECT: ANNUITY SALES SUPERVISION - ASSEMBLY BILL 811
DATE: MARCH 11, 2010

On behalf of the Wisconsin Council of Life Insurers, we appreciate the opportunity to provide comment on Assembly Bill 811 (AB 811) related to the supervision of annuity sales. This legislation is based on the National Association of Insurance Commissioners' (NAIC) Draft Revisions to the Suitability in Annuity Transactions Model Regulation. Although we are not taking a position on this bill, we strongly recommend that the Committee support uniformity in the regulation of annuity suitability. Therefore, should the Committee choose to advance AB 811, we respectfully request that the bill remain consistent with the NAIC draft model. In crafting this draft, the NAIC has attempted to pattern the regulations applicable to fixed annuity sales to be more consistent with the federal rules related to variable annuities.

NAIC Model Acts

One of the key functions provided by the NAIC is the development of uniform model laws. The NAIC brings together the collective experience and knowledge of regulators across the country to hear from consumer and industry representatives on a range of issues affecting the insurance industry. The NAIC has set aside funds to pay expenses for consumer representatives to attend the meetings and provide voice to the deliberations. Representatives of the insurance industry are also well represented during these discussions.

Not all insurance issues have been found to be appropriate for model law development. Different demographics, geographic risks and consumer expectations have resulted in

some insurance regulations having more variability from state to state. This is particularly true for property and casualty insurance products. In these instances, either models are not created or the NAIC establishes minimum national standards which provide more room for state variability. In contrast, regulators have found greater need for uniformity in areas such as long term care insurance and life insurance. There are considerable benefits to consumers when consistent regulation is applied to insurance products that they will hold for a longer period of time, through changing life circumstances. Not only is there consistent application of rules from state to state, but prices are lower for consumers when the same product can be sold in many different states without variation. Consistency in regulation is also important to life insurance companies who spend many millions of dollars every year complying with state insurance regulation. Compliance with one uniform system is significantly less expensive than modifying systems or developing new systems for what are often minor state variations. A lack of uniform regulation increasingly places life insurance company products at a competitive disadvantage as compared to other types of financial institutions who offer similar products.

Importance of Uniformity

We strongly encourage that Wisconsin's annuity suitability laws be consistent with the NAIC model. When the NAIC created the first annuity suitability model, Wisconsin was the first state to adopt the provisions in 2003 Wisconsin Act 261. Wisconsin's law was consistent with the NAIC model and set the stage for more uniform national adoption.

Wisconsin is again at the forefront of legislation affecting the supervision of annuity sales. AB 811 has been drafted and introduced even before final NAIC action. It is expected that the NAIC will take final action on the model during its meeting in late March. We strongly recommend that if Wisconsin moves forward in advance of NAIC final action, that AB 811 be amended as necessary to create uniformity between Wisconsin law and the model adopted by the full NAIC membership. We further request that no amendments be included that are inconsistent with the NAIC model.

Conclusion

The Wisconsin Council of Life Insurers respectfully requests that if the Wisconsin Legislature should choose to modify Wisconsin's annuity suitability supervision requirements that these changes be consistent with NAIC model language.



Nino Amato, Executive Director

Coalition of Wisconsin Aging Groups

Testimony to the Assembly Committee on Insurance in support of SB 572 Annuity Suitability Supervision

AB811

by John Hendrick

March 11, 2010

Rep. Cullen, members of the committee, thank you for this opportunity to testify in support of SB 572 regarding annuity sales supervision. The Coalition of Wisconsin Aging Groups is fortunate enough to combine two perspectives on the problem of unsuitable annuities. In addition to legislative advocacy on behalf of the one million Wisconsinites over 60, our organization provides direct services to seniors across the state.

For example, we have a statewide toll-free helpline for elderly victims of financial exploitation and as a result we hear about unsuitable annuities all the time. My impression is that the majority of all annuity victims are elderly. When you hear terms like "insufficient liquidity" and "review prior to issuance", this may sound like a dry bureaucratic subject. So I'd like to share one of our real life helpline calls.

A Wisconsin personal banker called our office about the following scenario: A stranger calls the bank and says he has instructions from a customer of the bank to clean out all his accounts including paying any penalties, fees or taxes on CDs and IRAs. The caller will stay at the home with the bank customer while his associate comes to the bank to collect the proceeds.

If you think this sounds more like the plot of a Hollywood heist movie than a thoughtful and careful process of estate planning and financial stewardship, I would agree with you. If you are my age, you may be picturing Robert Redford and Paul Newman running the scam. Today I suppose it would be George Clooney and Brad Pitt. And yet this turned out to be a proposed annuity sale.

Let me emphasize at this point that annuities are a perfectly valid insurance product sold by many honest insurance agents for many responsible insurance companies. But there are also dramatic abuses and the best time to deal with them is before the annuity is issued, rather than trying to clean up the mess later.

In order to prevent those annuities from being issued in the first place, we need the insurance companies to screen those sales prior to issuance. With modern technology, it is very possible to do this and all we need is this bill to set it in motion. Thank you for giving this bill your full consideration.

Elder Law Section Board



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March 11, 2010

TO: Assembly Committee on Insurance

FR: Attorney Ben Adams
Chair, Elder Law Section

RE: support for AB 811 relating to: suitability of annuity contracts

The Elder Law Section is comprised of a cross-section of practitioners who work to protect the rights of our clients and consumers. As attorneys, we work to develop and improve the laws that affect the elderly, and promote high standards of ethical performance and technical expertise for those who practice in the area.

The Elder Law Section strongly supports Assembly Bill 811 relating to the suitability of annuity contracts. Assembly Bill 811 revises the insurance statutes to provide additional requirements for insurance sales people and insurance companies to meet to ensure that the sale of an annuity to a consumer is suitable based on information the sales person must solicit from the prospective purchaser. Such information includes the consumer's financial and tax status. The sales person and insurance company must consider whether the annuity will replace another annuity, what the consumer's risk tolerance, liquidity needs, financial horizon and intended use of the annuity are. The bill requires that the consumer be informed of such things as whether a surrender charge or increased fees will be incurred for replacing an existing annuity.

The bill further requires training before a license to sell annuities will be issued. It requires the sales person to make reasonable efforts to obtain the suitability information from the consumer. It prohibits the insurer from issuing an annuity that the sales person has recommended unless it is reasonable to believe that the annuity is suitable for the consumer. It expands on the insurer's responsibility for monitoring and supervising annuity transaction recommendations.

Under the bill, the insurance commissioner retains authority to promulgate rules and to reduce or eliminate penalties for violations if corrective action is taken promptly for the consumer.

Elder law attorneys regularly see clients with annuities that are entirely unsuitable for their circumstances. Seventy- and eighty-year old clients with health problems who may foreseeably need liquidity to meet increasing health care needs are being sold deferred annuities with substantial penalties for surrender of these annuities within seven to 15

State Bar of Wisconsin

5302 Eastpark Blvd. ♦ P.O. Box 7158 ♦ Madison, WI 53707-7158
(800)728-7788 ♦ (608)257-3838 ♦ Fax (608)257-5502
Internet: www.wisbar.org ♦ Email: service@wisbar.org

years after the purchase of the annuity. It is not uncommon for an older person to be sold a deferred annuity by a bank teller based on the fact that the interest rate promised on the annuity is higher than the person could obtain with a certificate of deposit. The teller either neglects to tell the customer or the customer fails to appreciate that the customer will lose 10% of the purchase value (and any interest that 10% would have earned) if the customer wants to get funds out of the annuity in the next seven years.

It is also not uncommon for an annuity to have features the purchaser cannot understand, such as investment in subaccounts that mimic mutual funds with the risk of loss from the investments. Clients frequently express surprise that they have to pay income taxes on the earnings on the annuity when the funds are distributed to the client—they fail to comprehend the difference between tax-deferred and tax-free.

Assembly Bill 811 will give the insurance commissioner additional tools to regulate the sale of annuities to consumers. It requires sales people to receive training before receiving a license to sell annuities. It requires insurers to monitor and supervise the recommendations of the sales people as to the suitability of the sale of the annuity. The requirement that the sales person solicit information from the prospective purchaser upon which to base a recommendation for or against the purchase of the annuity in itself provides the consumer with protection. We find that the prospective purchaser often is offended if asked for personal financial information or health information and family circumstances in the annuity sales transaction, and yet this information is critical to the suitability analysis. By being asked the questions and then hearing the explanation of why the questions must be answered, the consumer will be given additional insight into whether this is, in fact, a good way to invest the money and whether the consumer is willing to take on the risks involved.

All consumers, but particularly the elderly, will benefit greatly from this legislation. We strongly urge your support for this legislation.

The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.

The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.

If you have questions about this memorandum, please contact Sandy Lonergan, Government Relations Coordinator, at slonergan@wisbar.org or (608) 250-6045.

HERB KOHL
WISCONSIN

WASHINGTON OFFICE:
330 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-5853
T.T.Y. (202) 224-4464
<http://kohl.senate.gov/>
senator.kohl@kohl.senate.gov

United States Senate

WASHINGTON, DC 20510-4903

COMMITTEES:
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March 8, 2010

Representative David Cullen, Chair
Assembly Committee on Insurance
Room 216 North
State Capitol
Madison, WI 53708

Dear Chairman Cullen,

Thank you for authoring Assembly Bill 811, a piece of legislation relating to suitability of annuity contracts. Increased consumer protections are necessary as more people turn to private investment options for their retirement income.

As chairman of the U.S. Senate Special Committee on Aging, I understand the vulnerability of individuals working with a third party to plan for their future financial needs and goals. As such, I introduced the Senior Investor Protection Act. Among other things, the Act provides grants to states that take steps to enhance the protection of seniors against misleading false credentials and designations. One of the requirements for receiving a grant is state adoption of the stronger suitability standards reflected in the proposed new National Association of Insurance Commissioners Suitability in Annuity Transactions Model Regulation. I am encouraged by your introduction of AB 811, which will help Wisconsin protect seniors and meet the necessary eligibility criteria for grant dollars under my proposal.

Assembly Bill 811 requires insurers to take responsibility for the sale of their annuity products. At a time when individuals feel pressure to stretch their retirement dollars further, it is critical that they be able to trust their agents and insurers to only present options that are suitable for their financial situation.

Sincerely,



U.S. Senator Herb Kohl

MILWAUKEE OFFICE:
310 WEST WISCONSIN AVENUE
SUITE 950
MILWAUKEE, WI 53203
(414) 257-4451
T.T.Y. (414) 257-4485

MADISON OFFICE:
14 WEST MIFFLIN STREET
SUITE 207
MADISON, WI 53703
(608) 264-5338

EAU CLAIRE OFFICE:
402 GRAHAM AVENUE
SUITE 206
EAU CLAIRE, WI 54701
(715) 832-8424

APPLETON OFFICE:
4321 WEST COLLEGE AVENUE
SUITE 235
APPLETON, WI 54914
(920) 738-1640

LACROSSE OFFICE:
425 STATE STREET
SUITE 202
LACROSSE, WI 54601
(608) 796-0045